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6 UNITED STATES BANKRUPTCY COURT
7 NORTHERN DISTRICT OF CALIFORNIA

8 In the Matter of:

9 Melissa Wilkerson
10 Debtor _____

Bankruptcy Case: 25-40564 CN

Chapter 13

11 **Reply re Debtor's Motion for**
12 **Summary Judgment on Debtor's**
13 **Motion for Damages for Violation of**
14 **the Automatic Stay**

15 Hearing REMOTE OR IN PERSON

16 Date: November 7, 2025

Time: 11:00 a.m.

Place: Courtroom 215

1300 Clay Street, Oakland CA 94612

The Honorable Charles Novack

17 Melissa Wilkerson hereby files this Reply brief regarding her *Motion for*
18 *Summary Judgment* (Dkt 83) on her *Motion for Damages for Violation of the Automatic*
19 *Stay* (Dkt 38) against NewRez LLC dba Shellpoint Mortgage Servicing, NBS Default
20 Services, LLC, (jointly "Creditors" or "Respondents") for proceeding with a foreclosure
21 sale in violation of the automatic stay. Shellpoint filed an opposition, docket 88. NBS
22 filed a "Notice of Joinder" to Shellpoint's Opposition, docket 89.

23 **Shellpoint's Opposition**

24 Shellpoint does not dispute that the violation of the stay was willful. The Court
25 may grant the MSJ as to liability as uncontested.

26 **1. EQUITABLE ESTOPPEL DOES NOT APPLY**

27 Shellpoint argues Debtor should be equitably estopped from asserting damages
28 for attorney's fees. Equitable estoppel does not apply to stay violations as it is

1 essentially a strict liability statute in the sense that any act taken in violation of the
2 stay is void regardless of willfulness, and damages for a willful violation only require
3 knowledge of the bankruptcy and a willful act.

4 The estoppel argument boils down to Shellpoint claiming a good faith belief they
5 were not violating the stay based on a 9:19 a.m. filing time and arguments about
6 §2924m. This not a defense: “No specific intent is necessary, and a creditor's good faith
7 belief that the stay was not being violated is not relevant to the issue of willfulness.”
8 *Stanwyck v. Bogen (In re Stanwyck)*, 450 B.R. 181, 192 (Bankr. C.D. Cal. 2011).

9 The Ninth Circuit has ruled that a creditor is liable for a willful violation of the
10 stay even where it relied on the advice of counsel and “creditors entertained a good
11 faith belief” in a legal argument that they were not violating the stay because a state
12 court judge entered an order lifting the stay. *In re Taylor*, 884 F.2d 478, 483 (9th Cir.
13 1989). The Ninth Circuit in *Taylor* affirmed that “the stay is a broad provision which
14 requires a creditor to seek a *judicial* determination of its right to proceed.” *Id.* Here,
15 Respondents should have sought a determination from this Court as to whether the
16 stay applied and their arguments under §2924m rather than proceed with the auction.

17 Shellpoint cites no case law where equitable estoppel was applied to a stay
18 violation as a defense, nor that it was successful.

19 **2. EQUITABLE ESTOPPEL CANNOT BE ESTABLISHED**

20 Even if estoppel were to apply, the estoppel argument is meritless because
21 estoppel is premised on intentionally deceptive conduct designed to induce reliance
22 harmful to Shellpoint and helpful to Debtor which is absurd here because Debtor did
23 not try to deceive Shellpoint into violating the stay, nor did it have that effect.

24 The second element of estoppel is that “He must intend that his conduct shall
25 be acted on or must so act that the party asserting the estoppel has a right to believe
26 it is so intended.” This element cannot be established here because the intent of
27 Debtor’s letter is that the sale be cancelled, which Shellpoint did not do. Shellpoint did
28 the opposite of what Debtor asked and intended, which defeats estoppel.

1 Where there is no intent to deceive, as here, estoppel can only be established
2 where a party “so act that the party asserting the estoppel has a right to believe it is
3 so intended.” Here, Shellpoint has no right to believe that Debtor intended Shellpoint
4 to act on any information in the letter to continue the sale in violation of the stay
5 because the letter expressly demands the cancellation of the ongoing sale which is the
6 action Debtor wanted Shellpoint to take.

7 The fourth element of estoppel cannot be established because Shellpoint did not
8 rely on Debtor’s conduct to its injury because they clearly disputed the 9:06 am filing
9 time in their opposition to the Motion for Sanctions, and they obviously would have
10 disputed it then and still refused to cancel the sale on the same grounds. Shellpoint
11 relied on its own frivolous legal arguments about §2924m trying to get away with
12 violating the stay until Debtor put up a fight.

13 Shellpoint’s claim that they decided to cancel the sale upon learning of the 9:06
14 a.m. filing time is unsupported by any evidence. It is an argument of counsel only and
15 does not rise to the level of a genuine dispute of material fact. It is irrelevant as to the
16 legal standards for a willful violation of the stay which is only knowledge of the
17 bankruptcy and an intentional act. It is also preposterous to believe that Shellpoint
18 would have cancelled the sale instead of fight disputed facts in the unusual case about
19 the filing time because Shellpoint fought based on frivolous legal arguments under
20 §2924m and §2924h where no legal argument of any kind is a defense to liability for
21 willfully violating the stay.

22 The evidence shows conclusively that the sale was not cancelled on account of
23 the 9:06 filing time, but as a litigation tactic to avoid paying Debtor’s fees. **Exhibit L**
24 to the MSJ includes emails produced by Shellpoint in response to Debtor’s discovery
25 requests for documents, and they demonstrate that Shellpoint and NBS only chose to
26 cancel the foreclosure because of the threat of litigation, not because they found out
27 about a 9:06 am filing time and suddenly decided to honor the automatic stay. On May
28 23, 2025, the day after this Motion was filed, attorney Chandra Pryor of Bonial &

1 Associates emailed many Shellpoint employees the following:

2 “counsel for the borrower served a Subpoena for Production of
3 Documents on NBS Default and asserted his intention to challenge the
4 validity of the sale. [...] No post-sale bids have been received, and the
5 Trustee's Deed could be issued to the original third-party bidder now.
6 However, there remains the threat of expensive and time-
7 consuming litigation by the borrower, and the third-party purchaser
8 is willing to walk away from the sale in exchange for a return of bid funds
9 to avoid the potential litigation regarding the validity of the sale in light
10 of the close-filed BK. [...] It seems that the borrower's counsel is pretty
11 aggressive about the desire to invalidate the sale, so he will likely file
12 a lawsuit or a motion in the bankruptcy court challenging the validity
13 of the sale and naming Shellpoint, NBS and the third-party purchaser as
14 parties. We have seen many examples of borrowers filing lawsuits
15 challenging the validity of foreclosure sales related to the filing of
16 bankruptcy during the SB 1079 post-auction period and/or within minutes
17 of the live sale auction, and they have been causing substantial delay
18 and expense.” (emphasis added) **Exhibit L.**

19 This shows that the decision was not based on any desire to honor or abide by
20 the automatic stay to follow the law, nor based on accepting the 9:06 filing time, but
21 was because Debtor's counsel was intent on protecting her rights. NBS and Shellpoint
22 did not decide on May 23rd (the day of these emails) to cancel the sale, but only decided
23 to cancel the sale a week later after Debtor refused their counsel's demand to withdraw
24 the motion.

25 Five days later on May 28, 2025, NBS attorney Michelle Mierzwa emailed
26 Shellpoint again in that email chain stating:

27 “As indicated previously, it appears that the attorney for the
28 borrower is serious about vigorously contesting the validity of

1 the sale. Our office just received the attached Motion filed in the
2 bankruptcy court, asserting that the bankruptcy was actually filed
3 at 9:06am prior to the sale completion at 9:14am, as she was waiting
4 in line for the court to open. While it is possible to oppose this motion,
5 due to the factual dispute regarding the time of filing, the substantial
6 equity in the property and the legitimate nature of the first-time BK
7 filing, *we recommend a voluntary rescission of the sale so that*
8 *we can negotiate for a dismissal of the attached motion and*
9 *avoid incurring substantial attorneys' fees and costs to*
10 *validate the sale.*" (emphasis added) **Exhibit L.**

11 This evidence establishes that they considered challenging the filing time and
12 pursuing the litigation to validate the sale under their arguments regarding §2924m
13 and §2924h and cancelled the sale out of fear of litigation costs and to use as
14 negotiating leverage for dismissal of the motion. Thereafter on May 30, 2025,
15 Shellpoint (NewRez) emailed their counsel that "The rescission strategy was approved
16 by the Investor, please proceed" showing this advice was accepted. **Exhibit L.**

17 On April 21, 2025 and May 15, 2025, Shellpoint's servicing notes from its system
18 of record show that it was aware of the Rule 2004 examination subpoena and Debtor's
19 intention to challenge the sale, with notes stating "We are handling the subpoena and
20 correspondence with the law firm representing the borrower and attempting to force
21 us to rescind the sale" and Shellpoint marked this note as "Risk: Low." **Exhibit M.**
22 However, the emails between Shellpoint and NBS and Bonial & Associates attached
23 as **Exhibit L** show that by May 23, 2025, after the Motion for Sanctions was filed, that
24 they marked all the emails with headings stating "Importance: High." This
25 demonstrates Shellpoint and NBS only started to take things seriously because of the
26 threat of litigation, not because of the 9:06 filing time.

27 **3. SHELLPOINT'S OBJECTIONS TO ATTORNEY'S FEES.**

28 Shellpoint argues that attorney's fees should not be awarded for drafting the

1 Motion for Sanctions because Debtor should have notified Shellpoint of the 9:06 filing
2 time before filing the Motion and they would have cancelled the sale. There is no
3 evidence to support this argument of counsel, and arguments alone cannot create a
4 genuine dispute of material fact. This is irrelevant to the legal standard that attorney's
5 fees are mandatory damages for willful violations of the stay. The argument assumes
6 that their actions based on the 9:19 filing time and \$2924m arguments were in good
7 faith and therefore a defense to liability, which is incorrect as a matter of law.
8 Shellpoint was obligated to stop the foreclosure regardless of the filing time.

9 The evidence shows Debtor went to extensive efforts to mitigate damages,
10 sending letters and emails asking to cancel the sale, then only doing a Rule 2004
11 examination after they refused to cancel the sale, then only bringing the sanction
12 motion after Shellpoint and NBS made it clear for five weeks that they would not stop
13 the sale without litigation and a court order. There can be no genuine dispute of
14 material fact that Debtor made all reasonable attempts to mitigate her damages.
15 Debtor did not ask for fees or damages in the August 11 demand letter. Debtor worked
16 for weeks to resolve the issue without litigation and without seeking fees, and only
17 brought the Motion when left with no other choice. Shellpoint has never made any
18 settlement offers nor offered to cover any fees or costs. [Supplemental Decl. of Andrew
19 J. Christensen]. This forces Debtor to proceed to recover her damages. This action was
20 brought for an order that the sale is void and to recover damages caused by the
21 violation. Debtor is entitled to both as a matter of law and Shellpoint cannot avoid
22 damages by rescinding the void sale after the motion was filed. Debtor is entitled to all
23 fees to enforce the stay and litigate to recover damages.

24 Shellpoint argues "It is without dispute that the foreclosure sale was very
25 promptly cancelled after the filing of the Original Motion[.]" This is patently false and
26 exactly the opposite of what the evidence conclusively shows. Shellpoint does not
27 dispute the declaration of undersigned Andrew J. Christensen that attorney Michelle
28 Mierzwa representing NBS and Shellpoint called the undersigned on the phone on May

1 28, 2025, demanding the Motion be dismissed and that there was no stay violation and
2 if the motion was dismissed NBS “might consider” cancelling the “completed
3 foreclosure sale.” Debtor’s counsel asked Ms. Mierzwa if she was authorized to make
4 a settlement offer and she said no. Debtor had no option but to continue forward with
5 the Motion to cancel the sale and recover her damages. *America’s Servicing Co. v.*
6 *Schwartz-Tallard (In re Schwartz-Tallard)*, 803 F.3d 1095, 1100 (9th Cir. 2015).

7 **4. NBS JOINDER**

8 Debtor objects to NBS’s “Notice of Joinder” to Shellpoint’s Opposition brief
9 because joinder is not allowed in a contested matter because BR 9014 does not
10 incorporate FRBP 7018 or FRCP 18 regarding joinder of claims. *In re Natera*, Nos. 17-
11 14112-B-13, DCN: TAT-2, 2022 Bankr. LEXIS 3239, at *4-5 (Bankr. E.D. Cal. Nov. 16,
12 2022). The document should be struck or disregarded and MSJ treated as unopposed
13 by NBS. In the alternative, the Court should consider only NBS’s arguments in their
14 brief as to NBS and not consider any of Shellpoint’s arguments to apply to NBS.

15 NBS does not argue or submit evidence disputing liability for willfully violating
16 the automatic stay, and the Court should grant the MSJ as to liability as uncontested.

17 NBS only argues for a reduction in damages, but does not submit evidence to
18 create any dispute of material fact, nor cite the correct legal standard, nor identify any
19 specific fees that are unreasonable or otherwise not compensable.

20 NBS’s only argument reducing the damages is that they had a good faith belief
21 that they were not violating the stay based on a 9:19 filing time and §2924m. As
22 discussed above, good faith legal arguments that the stay is not being violated is not a
23 defense to liability. Also, their legal arguments are frivolous based on the clear
24 unambiguous language of §2924m, §2924h, and the *Heger* case, so there is no good
25 faith belief.

26 NBS argues “Debtor and her counsel simply should not be rewarded for
27 engaging in this unnecessary escalation of a matter that would have easily been
28 resolved months ago without any contested matter commencing.” There is no evidence

1 to support this argument. No declarations, no documents. NBS has never made a
2 settlement offer, or ever offered to pay Debtor's fees. [Supp. Decl. Christensen]. This
3 left Debtor with no choice but to pursue a verdict to recover her damages. The case
4 cannot have been "resolved months ago" if there were no settlement offers. This is also
5 not the correct legal standard for the mandatory award of all damages caused by the
6 violation.

7 The legal standard for damages is that a debtor "shall recover actual damages"
8 if the debtor is "injured by any willful violation of a stay[.]" §362(k)(1). This section
9 also specifies that fees are damages: "shall recover actual damages, including costs and
10 attorneys' fees[.]" There is no limit to the type of "actual damages" allowed under
11 §362(k), only that a debtor can show evidence of the type and amount of damages and
12 causation. For example, emotional distress damages are available upon proving a
13 debtor suffered significant harm, clearly establishes the harm with evidence, and
14 demonstrates with evidence a causal connection between the harm and violation of the
15 stay. *Snowden v. Check into Cash of Wash., Inc.* 769 F.3d 651, 656-57 (9th Cir. 2014).

16 So too here, there is no genuine dispute of material fact that Respondents NBS
17 and Shellpoint willfully violated the stay, and that it caused Debtor to incur damages
18 in the form of attorney's fees and costs to stop the violation and recover damages. It is
19 undisputed that Shellpoint and NBS did not cancel the sale when asked, and only
20 cancelled it after the Motion was filed, and never made any settlement offers. All
21 evidence establishes that all the fees and costs incurred here were directly caused by
22 Creditors' violation of the stay. There is no evidence that anything else caused the fees
23 to be incurred. There is no evidence to create any dispute of fact that Debtor could have
24 avoided or mitigated fees because Respondents never offered to pay the damages, so it
25 is not unreasonable for Debtor to proceed. There is no evidence that NBS would have
26 cancelled the sale earlier upon seeing Debtor's declarations of a 9:06 a.m. filing time.

27 The fact that attorney's fees are damages under §362(k) is of critical importance
28 in enforcing the stay because it incentivizes enforcement of the stay by ensuring

1 creditors pay for all harm caused and that they cannot avoid stay enforcement by
2 claiming “no harm no foul” arguments because attorney’s fees are a harm caused to
3 enforce the stay. For example, most collection letters sent in violation of the stay cause
4 no harm other than attorney’s fees, so the stay would be useless and not honored by
5 creditors if there was no penalty for collection letters except in the few cases where
6 serious evidence of emotional distress could be established. Fees as damages is critical
7 to stay enforcement to avoid the exact argument Respondents make here, that Debtor
8 should not get fees for enforcing the stay after the violation was stopped. The Ninth
9 Circuit rejected that argument in *In re Schwartz-Tallard*, ensuring that all fees
10 incurred are awarded, including litigating damages, not just fees to stop the violation.

11 “The plain language of the statute requires that the injured party be awarded
12 the entire amount of actual damages reasonably incurred as a result of a violation of
13 the automatic stay.” *Stainton*, 139 B.R. at 235. “An award of attorney’s fees is
14 appropriate where an initial violation of the stay is followed by Debtor’s [sic] having to
15 resort to the courts to enforce his rights. (citations). Therefore, when a bankruptcy
16 court determines that a creditor willfully violated the automatic stay, **the bankruptcy**
17 **court is required to award actual damages clearly traceable to and**
18 **reasonably incurred as a result of the stay violation, including damages**
19 **suffered by a debtor for “having to resort to the courts to enforce his rights.”**

20 Thus, an individual debtor injured by a willful stay violation must be able to recover
21 all damages arising from the willful stay violation, including any costs and attorney’s
22 fees incurred on appeal.” (emphasis added) *Beard v. Walsh (In re Walsh)*, 219 B.R. 873,
23 879 (B.A.P. 9th Cir. 1998). Here, all fees and costs are reasonably incurred because
24 Respondents refused to stop the sale until extensive fees were incurred and the motion
25 filed, and there were no settlement offers by Respondents that would have allowed the
26 litigation to end earlier to stop further fees from being incurred.

27 The reason attorney’s fees and costs are damages and the reason they are
28 mandatory and include all work to stop the violation and litigate recovery of damages

1 and appeals is to ensure debtors are held harmless for violations of the stay: “This
2 expansive view of § 362(h) is consistent with the congressional policy to hold an
3 individual debtor harmless from willful violations of the automatic stay.” *Beard v.*
4 *Walsh (In re Walsh)*, 219 B.R. 873, 879 (B.A.P. 9th Cir. 1998). If this Court reduces
5 fees based on Respondent’s arguments, Debtor will not be made whole and Creditors
6 will be incentivized to abuse the stay and avoid consequence with frivolous arguments.

7 “Thus, Congress could not have expected § 362(k) to serve as an effective
8 deterrent unless it authorized recovery of the attorney's fees incurred in prosecuting
9 an action for damages.” *America's Servicing Co. v. Schwartz-Tallard (In re Schwartz-*
10 *Tallard)*, 803 F.3d 1095, 1100 (9th Cir. 2015).

11 CONCLUSION

12 The Court should grant summary judgment against NBS and Shellpoint as to
13 liability for willfully violating the stay because it is undisputed. The Court should
14 award the attorney’s fees and costs requested because there is no genuine dispute of
15 material fact that the fees were incurred, and caused by the willful violation, and
16 reasonable because Respondents refused to stop until after the motion was filed and
17 have not made any settlement offers and Debtor is entitled to all fees to stop the
18 violation and litigate entitlement to damages under *Schwartz-Tallard*.

19 The Court may, in addition, award punitive damages in an amount it feels is
20 appropriate based on the evidence of intentional and wide-spread violations.

21 In the alternative, the Court may grant the MSJ as to liability on the merits,
22 award the fees and costs incurred to date, and allow discovery and trial to proceed on
23 the issue of the appropriate amount of punitive damages if the Court would like more
24 evidence on that issue before awarding punitive damages.

25 Date: October 28, 2025

26 /s/ Andrew J. Christensen

27 Andrew J. Christensen
28 Attorney for Melissa Wilkerson

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6 UNITED STATES BANKRUPTCY COURT
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8 In the Matter of:

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10 Debtor _____

11 **Supplemental Declaration of**
12 **Andrew J. Christensen in Support**
13 **of Motion for Summary Judgment**
14 **on Motion for Damages for Violation**
of the Automatic Stay

15 I, Andrew J. Christensen, am counsel for Melissa Wilkerson. The statements
16 made herein are based upon my personal knowledge except to those matters which are
17 herein alleged on information and belief, and as to those matters, I believe them to be
18 true. If called as a witness in this matter, I could and would testify competently to each
19 and all of the statements made herein.

20 1. Respondents NBS and Shellpoint have not made any settlement offers
21 nor offered to pay any fees or damages in this matter.

22 I swear under the penalty of perjury that this is true and correct, and that this
23 declaration was executed on the following date in Oakland California.

24 DATED: October 28, 2025

25 /s/ Andrew J. Christensen
26 Andrew J. Christensen
27 Counsel for Debtor
28